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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,595	08/26/2003	Richard N. Teny	02706-0528 (42276-291519)	4976
23370	7590	04/11/2005	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			SZEKELY, PETER A	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,595

Applicant(s)

TERRY, RICHARD N.

Examiner

Peter Szekely

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/27/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 24 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The use of a composition is not patentable.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The claims contain improper Markush language.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8, 10 and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kissel 5,173,531, Dresdner, Jr. 5,375,636, Usuki et al. 5,728,781 or Morris et al. 6,063,849.

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7. Kissel discloses a dried polymer/salt product comprising colloidal salt particulates in claims 1 and 3, metals in claim 13 and zinc acetate in Table A. The coated textile is a formed article. Dresdner, Jr. teaches a glove containing colloidal silver iodide in gelatin in claim 5 and polymers in claim 3. For manufacturing process see Example 1. Usuki et al. recite colloidal salts and oxides in claim 12 and polyalkylene oxides in claim 1. Morris et al. divulge colloidal zinc oxide in claim 1, polymers in claim 3, treating a surface in claim 13 and dipping in column 6, line 28. Applicant's claims are not novel.

8. Claims 1-11 and 14-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Terry et al. 6,596,401, Gibbins et al. 6,605,751, Kanamori et al. 6,756,124 or Chevalier et al. 2003/0007985.

9. Terry et al. reveal silane copolymer in claim 1, polyurethane copolymer in claim 2, colloids of oligodynamic metal salts in claim 5, coated substrate in claim 7, multiple layers in claim 13, dipping, brushing and spraying in claim 20, medical devices in claims 17-19, silver nitrate in Example 9, concentrations and one or more salts from column 13, line 45, to column 14, line 10 and colloidal salts in column 14, lines 27-54. Gibbins et al. display a polysaccharide and metal colloid in claims 1, 17 and 21, silver chloride colloid in claims 19 and 25, medical devices in column 4, lines 37-63 and forming, dipping etc. and methods of use from column 8, line 25, to column 9, line 4. See also Example 14. Kanamori et al. present an organosilane and a silicone polymer in claims 1 and 2 and colloidal zinc oxide and/or colloidal cerium oxide in claim 6. For method of applications, see the Examples. Chevalier et al. discuss colloidal zinc oxide

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in claim 5, gums and elastomers in claim 8, other polymers in claims 20, 21 and 27.

Applicant's claims are not novel.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kissel 5,173,531, Dresdner, Jr. 5,375,636, Usuki et al. 5,728,781, Morris et al. 6,063,849, Terry et al. 6,596,401, Gibbins et al. 6,605,751, Kanamori et al. 6,756,124 or Chevalier et al. 2003/0007985.

12. All references have been described already. The examiner holds that partially coating an article or coating a transparent article is a matter of choice, and as such, it would have been obvious to one having ordinary skill in the art, at the time the invention was made.

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 41, 43-52 and 56-58 of copending Application No. 10/212,505. Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositions overlap.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peter Szekely
Primary Examiner
Art Unit 1714

P.S.
4/6/05